



105  
7/31

001385

THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: July 25, 2007

REPORT NO: 07-129

ATTENTION: Council President and City Council

Docket of July 31, 2007

SUBJECT: Agreement with the Bird Rock Development Corporation for the  
Administration of Contracts for Goods and Services in the Bird Rock  
Maintenance Assessment District for Fiscal Year 2008

REFERENCE:

REQUESTED ACTION:

This City Council action is to authorize the Bird Rock Development Corporation to administer the contracts for goods and services in support of the Bird Rock Maintenance Assessment District. This request is community driven.

STAFF RECOMMENDATION:

1. Authorize the Mayor to execute a Service Agreement with the Bird Rock Development Corporation for administration of Contracts for Goods and Contracts for Services for the Bird Rock Maintenance Assessment District for a twelve-month period beginning July 1, 2007, in accordance with the San Diego Municipal Code Section 65.0212.
2. Authorize the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$24,750 from Fund No. 70281, Bird Rock Maintenance Assessment District, for administrative fees incurred by the Bird Rock Development Corporation in the course of providing services under the Service Agreement, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available.

SUMMARY:

The Maintenance Assessment District Ordinance, San Diego Municipal Code Section 65.0212 paragraph (b)(2), authorizes the City Council to approve a one-year Agreement with non-profit corporations to administer the Contracts for Goods and Contracts for Services in Maintenance Assessment Districts, if the required percentage of property owners have requested it. On August 2, 2005, the majority property owners in the Bird Rock Maintenance Assessment District (District) requested that their contracts be administered by the "Bird Rock Development Corporation" (Corporation). The Corporation, doing business as "Bird Rock Community Council," wishes to enter into this Agreement with the City of San Diego from July 1, 2007 to June 30, 2008.

This action will authorize the Mayor to sign and execute the Agreement between the City and the Corporation for a period of twelve months beginning on July 1, 2007, and ending on June 30, 2008, with the following provisions:

1. The Corporation will administer Contracts for Goods and Contracts for Service and prepare financial statements for the District as provided for in the Maintenance Assessment District Ordinance, Landscape and Lighting Act of 1972, and as set forth in the Assessment Engineer's Report dated June 2007 for the Bird Rock Maintenance Assessment District.
2. The Corporation will perform all duties as set forth in the Agreement under Article I ("Scope of Services") Section B ("Specific Requirements"). The Corporation will be reimbursed for these services within fifteen (15) working days from receipt of properly prepared reimbursement requests.
3. The Corporation will be compensated for administration in an amount not to exceed 15% of the approved assessments, or \$2,062 per month.

FISCAL CONSIDERATIONS:

Funds are available in the Bird Rock Maintenance Assessment District (Fund 70281) to reimburse the Corporation for maintenance services. The total approved annual assessments for Bird Rock MAD in Fiscal Year 2008 is \$137,745. Under the terms of the agreement, the City will be reimbursed \$833 per month for administrative services from Fund 70281.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None

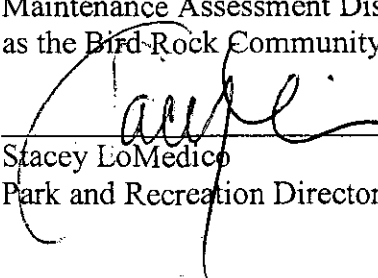
The Bird Rock Maintenance Assessment District was approved by affected property owners and was approved by City Council Resolution R-300746 on August 2, 2005.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

An advisory committee consisting of property owners within the district is in favor of the Bird Rock Development Corporation administering the contracts for goods and services. On August 2, 2005, voters approved the Bird Rock Development Corporation administering the contracts for goods and services.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders in this area include all property owners within the boundaries of the Bird Rock Maintenance Assessment District and the Bird Rock Development Corporation (doing business as the Bird Rock Community Council).

  
Stacey LoMedico  
Park and Recreation Director

  
Rick Reynolds  
Assistant Chief Operating Officer

**001387**DOCKET SUPPORTING INFORMATION  
CITY OF SAN DIEGO

DATE:

**EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION**

July 6, 2007

SUBJECT: Agreement with the Bird Rock Development Corporation for the Administration of Contracts for Goods and Services in the Bird Rock Maintenance Assessment District for Fiscal Year 2008

**GENERAL CONTRACT INFORMATION**

Recommended Consultant: Bird Rock Development Corporation  
Amount of this Action: \$ 24,750  
Funding Source: City  
Goal: 15% Voluntary Subconsultant Participation

**SUBCONTRACTOR PARTICIPATION**

There is no subconsultant activity related to this action.

**EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE**

Equal Opportunity: Required

Bird Rock Development Corporation submitted a Work Force Report dated June 15, 2007 which reflects a total of 8 employees. The firm has fewer than 15 employees and is therefore exempt from employment category goals.

**ADDITIONAL COMMENTS**

The *Work Force Analysis* is attached.

by: AMJ

File: Admin WOFO 2000

Date WOFO Submitted: June 15, 2007

Input by: rll

Goals reflect statistical labor force

availability for the following:

2000 CLFA

San Diego, CA

City of San Diego/Equal Opportunity Contracting

## WORK FORCE ANALYSIS REPORT

FOR

Company: Bird Rock Community Development Corporation

001389

### I. TOTAL WORK FORCE:

|                        | Black |   | Hispanic |       | Asian |       | American Indian |   | Filipino |       | White |       | Other |   |
|------------------------|-------|---|----------|-------|-------|-------|-----------------|---|----------|-------|-------|-------|-------|---|
| CLFA Goals             | M     | F | Goals    | M     | F     | Goals | M               | F | Goals    | M     | F     | Goals | M     | F |
| Mgmt & Financial       | 3.3%  | 0 | 0        | 11.9% | 0     | 0     | 6.2%            | 0 | 0        | 6.2%  | 0     | 0     | 0     | 0 |
| Professional           | 4.0%  | 0 | 0        | 12.6% | 0     | 0     | 6.5%            | 0 | 0        | 6.5%  | 0     | 0     | 0     | 0 |
| A&E, Science, Computer | 2.8%  | 0 | 0        | 7.3%  | 0     | 0     | 16.2%           | 0 | 0        | 16.2% | 0     | 0     | 0     | 0 |
| Technical              | 6.6%  | 0 | 0        | 14.8% | 0     | 0     | 17.2%           | 0 | 0        | 17.2% | 0     | 0     | 0     | 0 |
| Sales                  | 3.9%  | 0 | 0        | 19.5% | 0     | 0     | 6.8%            | 0 | 0        | 6.8%  | 0     | 0     | 0     | 0 |
| Administrative Support | 7.0%  | 0 | 0        | 20.8% | 0     | 0     | 8.8%            | 0 | 0        | 8.8%  | 0     | 0     | 0     | 0 |
| Services               | 5.5%  | 0 | 0        | 36.9% | 0     | 0     | 8.7%            | 0 | 0        | 9.7%  | 0     | 0     | 0     | 0 |
| Crafts                 | 4.5%  | 0 | 0        | 25.8% | 0     | 0     | 9.1%            | 0 | 0        | 9.1%  | 0     | 0     | 0     | 0 |
| Operative Workers      | 4.3%  | 0 | 0        | 38.8% | 0     | 0     | 20.8%           | 0 | 0        | 20.8% | 0     | 0     | 0     | 0 |
| Transportation         | 8.1%  | 0 | 0        | 32.1% | 0     | 0     | 4.5%            | 0 | 0        | 4.5%  | 0     | 0     | 0     | 0 |
| Laborers               | 4.4%  | 0 | 0        | 54.0% | 0     | 0     | 4.1%            | 0 | 0        | 4.1%  | 0     | 0     | 0     | 0 |
| TOTAL                  | 0     | 0 | 0        | 0     | 0     | 0     | 0               | 0 | 0        | 0     | 6     | 2     | 0     | 0 |

### HOW TO READ TOTAL WORK FORCE SECTION:

The information blocks in Section 1 (Total Work Force) identify the absolute number of the firm's employees. Each employee is listed in their respective ethnic/gender and employment category. The percentages listed under the heading of "CLFA Goals" are the County Labor Force Availability goals for each employment and ethnic/gender category.

Mgmt & Financial  
Professional  
A&E, Science, Computer  
Technical  
Sales  
Administrative Support  
Services  
Crafts  
Operative Workers  
Transportation  
Laborers

TOTAL

| TOTAL EMPLOYEES |   |   | Female Goals |
|-----------------|---|---|--------------|
| ALL             | M | F |              |
| 8               | 6 | 2 | 39.8%        |
| 0               | 0 | 0 | 59.5%        |
| 0               | 0 | 0 | 22.3%        |
| 0               | 0 | 0 | 49.0%        |
| 0               | 0 | 0 | 49.4%        |
| 0               | 0 | 0 | 73.2%        |
| 0               | 0 | 0 | 62.3%        |
| 0               | 0 | 0 | 8.6%         |
| 0               | 0 | 0 | 36.7%        |
| 0               | 0 | 0 | 15.2%        |
| 0               | 0 | 0 | 11.1%        |
| 8               | 6 | 2 |              |

### HOW TO READ EMPLOYMENT ANALYSIS SECTION:

The percentages listed in the goals column are calculated by multiplying the CLFA goals by the number of employees in that job category. The number in that column represents the percentage of each protected group that should be employed by the firm to meet the CLFA goal. A negative number will be shown in the discrepancy column for each underrepresented goal of at least 1.00 position.

### II. EMPLOYMENT ANALYSIS

This firm has fewer than 15 employees and is, therefore, exempt from the employment category goals.

## REQUEST FOR COUNCIL ACTION

CITY OF SAN DIEGO

1. CERTIFICATE NUMBER  
(FOR AUDITOR'S USE ONLY)

AC 28000003

TO: 001391  
CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT):

Park and Recreation

3. DATE:

May 21, 2007

## 4. SUBJECT:

Agreement with the Bird Rock Development Corporation for the Administration of Contracts for Goods and Services in the Bird Rock Maintenance Assessment District for Fiscal Year 2008

5. PRIMARY CONTACT (NAME, PHONE, &amp; MAIL STA.)

Clay Bingham, 619-533-6724, 804A

6. SECONDARY CONTACT (NAME, PHONE, &amp; MAIL STA.)

Margaret May, 619-533-6778, 804A

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED



## 8. COMPLETE FOR ACCOUNTING PURPOSES

| FUND           | 70281     |  |  |  | 9. ADDITIONAL INFORMATION / ESTIMATED COST:  |
|----------------|-----------|--|--|--|--|
| DEPT.          | 70281     |  |  |  | Per the agreement, the Bird Rock Community Council is entitled to a maximum of \$2,062 per month for the administration of the contracts for goods and services. This agreement is for twelve months, from July 1, 2007, to June 30, 2008. |
| ORGANIZATION   | 2000      |  |  |  |  |
| OBJECT ACCOUNT | 4151      |  |  |  |  |
| JOB ORDER      | 950281    |  |  |  |  |
| C.I.P. NUMBER  | N/A       |  |  |  |  |
| AMOUNT         | \$ 24,750 |  |  |  |  |

## 10. ROUTING AND APPROVALS

| ROUTE (#) | APPROVING AUTHORITY          | APPROVAL SIGNATURE | DATE SIGNED | ROUTE (#) | APPROVING AUTHORITY | APPROVAL SIGNATURE | DATE SIGNED |
|-----------|------------------------------|--------------------|-------------|-----------|---------------------|--------------------|-------------|
| 1         | ORIG. DEPT                   | STACEY LOMEDICO    | 6-5-07      | 8         | DEPUTY CHIEF        | RICK REYNOLDS      | 7/9/07      |
| 2         | ENVIRONMENTAL ANALYSIS (DSD) | Alison Sherwood    | 6-11-07     | 9         | COO                 | RONNE FROMAN       | 7/10/07     |
| 3         | EOCP                         | CELIA GRIFFIN      | 7-6-07      | 10        | CITY ATTORNEY       | ELIZABETH COLEMAN  | 7/13/07     |
| 4         | DOCKET LIAISON               | ED PLANK           | 6/21/07     | 11        | ORIG. DEPT          | STACEY LOMEDICO    | 7-6-7-07    |
| 5         | FM                           | GINA DULAY         | 6/22/07     |           | DOCKET COORD:       |                    |             |
| 6         | AUDITOR                      | FERNANDA FIGUEROA  | 6/29/07     |           | COUNCIL PRESIDENT   |                    |             |
| 7         |                              |                    |             |           |                     |                    |             |

## 11. PREPARATION OF:

☒ RESOLUTIONS☐ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

1. Authorizing the Mayor to execute a Service Agreement with the Bird Rock Development Corporation for administration of Contracts for Goods and Contracts for Services for the Bird Rock Maintenance Assessment District for a twelve-month period beginning July 1, 2007, in accordance with the San Diego Municipal Code Section 65.0212.
2. Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$24,750 from Fund No. 70281, Bird Rock Maintenance Assessment District, for administrative fees incurred by the Bird Rock Development Corporation in the course of providing services under the Service Agreement, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available.

11A. STAFF RECOMMENDATIONS: Adopt the resolutions.

## 12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)

COUNCIL DISTRICT(S): 1 (Peters)

COMMUNITY AREA(S): La Jolla

ENVIRONMENTAL IMPACT: This activity is not a "project" and is therefore not subject to the California Environmental Quality Act (CEQA) pursuant to state CEQA guidelines Section 15060(c)(3).

HOUSING IMPACT: None known.

OTHER ISSUES: Attention City Clerk: Once copies of resolutions are available, please contact Margaret May at 619-533-6778 and send them to Mail Station 804A.

001393

**The City of San Diego  
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER**

**CERTIFICATE OF UNALLOTTED BALANCE**

AC 2800003

ORIGINATING

DEPT. NO.: 70281

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \_\_\_\_\_ Fund: \_\_\_\_\_

Purpose: \_\_\_\_\_

Date: \_\_\_\_\_ By: \_\_\_\_\_

AUDITOR AND COMPTROLLER'S DEPARTMENT

| ACCOUNTING DATA |       |      |      |      |         |           |                      |             |          |        |
|-----------------|-------|------|------|------|---------|-----------|----------------------|-------------|----------|--------|
| ACCTG.<br>LINE  | CY PY | FUND | DEPT | ORG. | ACCOUNT | JOB ORDER | OPERATION<br>ACCOUNT | BENF/ EQUIP | FACILITY | AMOUNT |
|                 |       |      |      |      |         |           |                      |             |          |        |
|                 |       |      |      |      |         |           |                      |             |          |        |
|                 |       |      |      |      |         |           |                      |             |          |        |
|                 |       |      |      |      |         |           |                      |             |          |        |
|                 |       |      |      |      |         |           |                      |             |          |        |
|                 |       |      |      |      |         |           |                      |             |          |        |
| TOTAL AMOUNT    |       |      |      |      |         |           |                      |             |          |        |

FUND OVERRIDE ☐

**CERTIFICATION OF UNENCUMBERED BALANCE**

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$24,750.00

Vendor: Bird Rock Development Corporation

Purpose: Authorizing the expenditure of funds for the contract between the City of San Diego and Bird Rock Development Corporation for the administration of contracts for goods and services for the Bird Rock Maintenance Assessment District from July 1, 2007 to June 30, 2008.

Date: June 29, 2007

By: *Fernando Figueras*  
AUDITOR AND COMPTROLLER'S DEPARTMENT

| ACCOUNTING DATA |       |       |       |      |         |           |                      |             |          |           |
|-----------------|-------|-------|-------|------|---------|-----------|----------------------|-------------|----------|-----------|
| ACCTG.<br>LINE  | CY PY | FUND  | DEPT  | ORG. | ACCOUNT | JOB ORDER | OPERATION<br>ACCOUNT | BENF/ EQUIP | FACILITY | AMOUNT    |
| 001             | 0     | 70281 | 70281 | 2000 | 4151    | 950281    |                      |             |          | 24,750.00 |
|                 |       |       |       |      |         |           |                      |             |          |           |
|                 |       |       |       |      |         |           |                      |             |          |           |
|                 |       |       |       |      |         |           |                      |             |          |           |
|                 |       |       |       |      |         |           |                      |             |          |           |
| TOTAL AMOUNT    |       |       |       |      |         |           |                      |             |          |           |

AC-361 (REV 2-92)

FUND OVERRIDE ☐

AC 2800003

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE EXECUTION OF SERVICE AGREEMENTS WITH BIRD ROCK DEVELOPMENT CORPORATION FOR ADMINISTRATION OF CONTRACTS FOR GOODS AND CONTRACTS FOR SERVICES; AND AUTHORIZING APPROPRIATION AND EXPENDITURE OF FUNDS FOR ADMINISTRATIVE FEES FOR THE BIRD ROCK MAINTENANCE ASSESSMENT DISTRICT.

BE IT RESOLVED, by the Council of the City of San Diego, that the Mayor is authorized and empowered to execute a Maintenance Agreement for the administration of Contracts for Goods and Contracts for Services pursuant to San Diego Municipal Code section 65.0212 [Maintenance Agreement] with the Bird Rock Development Corporation for the Bird Rock Maintenance Assessment District for a one year period beginning July 1, 2007 through June 30, 2008 in accordance with the San Diego Municipal Code section 65.0212. A copy of the Maintenance Agreement for the Bird Rock Maintenance Assessment District is on file in the office of the City Clerk as Document No. RR\_\_\_\_\_.

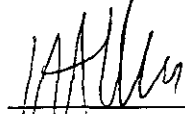
BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is authorized to appropriate and expend an amount not to exceed \$24,750 from Fund No. 70281 for administrative costs incurred by the Bird Rock Development Corporation in the course of providing services under the Maintenance Agreement for the Bird Rock Maintenance Assessment District, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is authorized to transfer an amount not to exceed \$10,000 from Fund No. 70281 to Fund No. 70208 for

administrative costs incurred by the City of San Diego [City] in the course of providing administrative services to the Bird Rock Maintenance Assessment District, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Elizabeth C. Coleman  
Deputy City Attorney

ECC:mm

07/13/07

Or.Dept:P&R

R-2008-70

MMS# 5117

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor



**MAINTENANCE AGREEMENT BETWEEN THE CITY OF SAN DIEGO  
AND THE BIRD ROCK DEVELOPMENT CORPORATION**

THIS MAINTENANCE AGREEMENT "Agreement" is made and entered into by and between the City of San Diego, a municipal corporation, herein called "City", and the Bird Rock Community Development Corporation, a non-profit corporation, herein called "BRDC".

**RECITALS**

WHEREAS, the City desires to retain the services of the BRDC to provide administration of the maintenance services to Bird Rock Maintenance Assessment District, herein called "District"; and

WHEREAS, the boundaries of the District are generally defined as follows: the area bounded (i) on the west by the Pacific Ocean; (ii) on the north by La Cañada Street; (iii) on the east by Folsom Drive, Bellevue Avenue, Linda Rosa Avenue; and (iv) on the south by La Jolla Mesa Drive, Colima Street, Bird Rock Elementary School/Park, and Wrelton Drive within the La Jolla Community Planning Area; and

WHEREAS, a majority of the property owners in the District, weighted by the dollar amount of their assessments in the District, signed ballots in support of the BRDC's role to assume the responsibility for administration of Contracts for Goods and Contracts for Services (as these terms are defined in San Diego Municipal Code 65.0202) for the District for a period of one year in accordance with the San Diego Municipal Code section 65.0212.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and for other valuable consideration which is hereby acknowledged, the City and the BRDC hereby agree as follows:

**ARTICLE I - SCOPE OF SERVICES**

**A. GENERAL SERVICES**

1. The BRDC shall provide: administration of the Contracts for Goods and Contracts for Services and prepare financial statements for the District in connection with provisions of the "Maintenance Assessment Districts Ordinance" (being Division 2, Article 5, Chapter VI, beginning at section 65.0201 of the San Diego Municipal Code), and the provisions of the "Landscaping and Lighting Act of 1972" (being Part 2 of Division 15 of the California Streets and Highways Code), for services to the District as set forth in the assessment engineer's report "Engineer's Report" for the District.
2. The BRDC shall perform all duties and services specifically set forth herein as reasonable and necessary to accomplish the intent of this Agreement in a manner consistent with the standards outlined in this Agreement.

**B. SPECIFIC REQUIREMENTS**

1. The BRDC, at a minimum, shall provide the following maintenance standards within the boundaries of the District as described for each Zone in the Engineer's Report:
  - (a) Litter Control (Ongoing)  
Remove litter from right-of-way sidewalks, curbs, gutters and landscaped areas. All trash removed will be disposed of at a City-approved waste site.
  - (b) Tree Maintenance and Replacement (Ongoing)  
All trees located in the public right-of-way in the District shall be maintained in a manner which promotes healthy tree growth, including, but not limited to, fertilization, pest control, watering, staking and trimming. Trees that present an immediate safety hazard or have potential for private property damage shall be corrected immediately. Dead and irreparably damaged trees will be replaced in a timely manner with healthy trees of the same species and of at least 24 inch box size. All tree trimming above 16 feet and tree replacement shall be conducted by a certified arborist and pest applications shall be conducted by certified professional applicators.
  - (c) Other Landscape Maintenance and Repair (Ongoing)  
All plant material in the public right-of-way shall be maintained in optimum condition and landscaped areas shall be kept weed free. Street gutters shall be kept free of dirt, sand and debris, and sidewalks may be cleaned as necessary. The landscape irrigation system shall be properly maintained to ensure optimum tree health and plant growth. Trash receptacles and street benches shall be repaired or replaced as needed.
  - (d) Graffiti Control (Five (5) days per week: Monday through Friday, excluding City holidays)  
All graffiti shall be removed from the public right-of-way within twenty-four (24) hours of being reported. All graffiti observed on private property shall be reported for repair within twenty-four (24) hours to the BRDC, the City, Neighborhood Services, Planning and Development Business Center, or Neighborhood Code Compliance Department / Graffiti Control Program (619-525-8522).
  - (e) Sidewalk Safety Hazards (Ongoing)  
All sidewalk safety hazards which are observed in the course of providing enhanced maintenance services, as described in this Agreement (including damaged meter boxes and street vaults), shall be barricaded immediately and then, immediately following barricading, reported for repair to the City's General Services Department: Street Division. If an unsafe sidewalk condition exists and is reported to the City's Street Division (at 619-527-7500 OR e-mail [www.sandiego.gov](http://www.sandiego.gov) and select Request a Street

Repair – either means of reporting provides a “standard notification number” confirming that the report was made and received), the City will take action to temporarily mitigate the potential hazard and notify abutting property owners of their responsibility to permanently repair/replace the sidewalk. The BRDC shall have no obligation to repair or otherwise protect against such conditions, and shall have no liability to the City or any third party for claims or loss related to such conditions, except to the extent the condition is directly caused by the negligence or willful misconduct of the BRDC, its employees or agents or if the “observed” condition is not immediately barricaded and reported as required in this provision.

(f) Lighting Service (Ongoing)

Street light lamps observed to be out or street light poles which have been damaged shall be immediately reported for repair to the City, Public Works Business Center, General Services Department / Street Division / Electrical Section, General Information and Service Requests, Street Light and Traffic Signal Maintenance (619-527-8056).

(g) Miscellaneous (Ongoing)

Provide for services that the City and the Contractor find reasonable and necessary from time to time to accomplish the intent of this Agreement in accordance with the Engineer’s Report with respect to any Improvement including: security services, promotion of public events, the installation, construction, or acquisition of facilities such as, benches, booths, kiosks, display cases, pedestrian shelters and signs, trash receptacles, decorations and banners.

2. The BRDC shall conduct on-site inspections of all work done under this Agreement in the District and shall submit a report to the City indicating that such on-site inspections have been completed.
3. City staff shall conduct four (4) District inspections per year to evaluate compliance with the above referenced maintenance standards. A City inspection report shall be supplied to the BRDC within fifteen (15) working days of the inspection and BRDC shall have five (5) working days to correct any deficient standard reported. The inspections will be completed by City staff every 3 months.
4. The BRDC shall be responsible for responding, in writing, to the City regarding District maintenance complaints received by the City.
5. The BRDC shall provide at least one (1) noticed meeting with the property owners within the District annually and attempt to meet on a regular basis with the relevant planning group or designated property owners’ representatives within the District. The noticed meeting shall be used to finalize plans and specifications

001400

for improvements and maintenance as described in the Engineer's Report, evaluate the performance of any maintenance contractor, and advise the BRDC regarding the improvements and regular maintenance as described in the Engineer's Report for the District. For the regular meeting, the BRDC shall use its best efforts to contact either orally or in writing the relevant community planning group or designated property owners' representatives of the District, and community newspapers, if available.

6. The BRDC shall submit to the City no later than February 15 of each year a District approved, line item budget for the upcoming Fiscal Year. This proposed budget for services in the District will be included in the Bird Rock Maintenance Assessment District Engineer's Report each year.
7. The BRDC shall maintain a separate set of books and records for costs associated with the BRDC's responsibilities under this Agreement for annual audit at the expense of the District. All records shall be made available for inspection and photocopying by the City upon reasonable notice. The City's rights with respect to such records are further governed by the provisions of Article V of this Agreement. The BRDC shall maintain such books and records for a period of three (3) years following completion of this Agreement.

## **ARTICLE II - SERVICES PROVIDED BY THE CITY**

### **A. BUDGET**

1. The City shall carry out all actions reasonably necessary for processing the annual budget for maintenance of the District.
2. The City shall review the BRDC's proposed maintenance operations in processing the annual budget for the District.
3. The City may amend line items in the annual budget upon a written request from the BRDC, as long as the amendments would not increase the total amount authorized for reimbursement to the BRDC.

### **B. SERVICES**

1. The City shall conduct at least four (4) on-site inspections of the District during the period of this Agreement. In the event the City determines from such inspections that the District is not being properly administered by the BRDC, a report of such findings will be presented first to the BRDC, and, if not satisfactorily corrected within thirty (30) calendar days will then be presented to the City Council.
2. The City shall reserve the right to deploy its public safety personnel in a manner which, in the City's sole discretion, best serves the needs of the public. Further,

nothing in this Agreement shall be deemed to abrogate or waive the provisions of California Government Code section 845.

3. The City shall coordinate the collection of assessments with the County of San Diego and provide administrative services, general assistance and information to the BRDC.

### **ARTICLE III - COMPENSATION AND REIMBURSEMENT**

#### **A. INVOICES**

1. The BRDC shall submit monthly reimbursement requests to the City. The City shall reimburse the BRDC from District funds within fifteen (15) working days of receipt of a proper reimbursement request. The request must include both a Trial Balance and Summary of Expenses as of the period claimed. The Summary of Expenses shall detail expenses by expenditure category and line item as reflected in the approved City's District budget format, as shown on attached Exhibit A.
2. All invoices shall include the names and rates of pay for contracted personnel who have performed services on behalf of the District, the hours worked, and details of any reasonable and necessary out-of-pocket expenses.

#### **B. COMPENSATION**

1. The BRDC shall be compensated for its services pursuant to this Agreement solely by the terms of this Section 3 (B). The BRDC shall be authorized to add to the reimbursement requests made under this Article III an additional fifteen percent (15%) of the total amount actually expended by the BRDC for the wages and salaries of employees only to the extent such salaries compensate for activities directly undertaken for the administration of the District, as "Administrative Overhead." The BRDC shall not be authorized to include charges for Administrative Overhead in connection with any of the following expenses: (1) monies expended for the purchase of goods or supplies; (2) sums paid to third party contractors for the preparation of the assessment Engineer's Report; (3) general business expenses such as office rent, office equipment, accounting and auditing expenses, insurance premiums, copying, printing, or postage fees. The BRDC shall not be authorized to include charges for Administrative Overhead on any amounts paid by the BRDC that contain any administrative charges by the billing entity. If the BRDC enters into any contracts with third parties for the performance of any of BRDC's duties under this Agreement and any such contract includes an administrative charge, the BRDC shall not be entitled to receive Administrative Overhead reimbursements for their own administration activities related to the work performed by third party contractors.

2. Administrative overhead reimbursement to the Association shall be limited to the lesser of (1) \$24,750 (or \$2,062 per month) over the life of this Agreement, or (2) 15 percent (15%) of the estimated assessment revenues in the District, which ever amount is smaller.
3. The City shall be reimbursed the greater of \$10,000 or six percent (6%) of annual assessments for administrative services associated with the annual budget processing, property tax enrollment and collections, professional engineering services, on-site inspections, and audit services from the District budget.

**C. ADVANCES**

1. Upon a written request from the BRDC, the City may make a cash advance of two months of working capital to the BRDC based on the District's monthly cash flow budget requirements related to the approved District budget. If the District reserves are not adequate to cover the working capital advance request, an advance will be based on available cash at the time of the request.
2. The advance will be returned on or before the termination of this Agreement as either a reduction of the final reimbursement request or a transfer of funds from the BRDC.

**D. SUSPENSION OF PAYMENT.**

1. If the BRDC fails to perform any of its obligations as set forth in this Agreement, the City shall have the right to suspend the payment of Administrative Overhead fees to the BRDC pursuant to Article III until such time as the BRDC is in compliance with the terms hereof. If, as a result of BRDC's failure to perform, the City elects to withhold payment hereunder, the City shall give BRDC written notice of its intention to suspend payment of Administrative Overhead fees until BRDC has cured its noncompliance herewith. Such notice shall provide BRDC with a description of the failure to perform upon which the City has based its suspension of payment hereunder. Upon the performance by the BRDC of its obligations under this Agreement, the City shall resume payments of Administrative Overhead to the BRDC in conformance with the terms of Article III as set forth above, including payment of any amounts for which payment was suspended hereunder.

**ARTICLE IV - EFFECTIVE DATE AND TERM**

This Agreement shall be effective from July 1, 2007 through June 30, 2008, and continue until completion of the scope of services, or upon written notice of cancellation, but in no event shall it exceed one (1) year. This Agreement may be renewed each year at the City's sole option.

**ARTICLE V - DOCUMENTS, RECORDS AND REPORTS****A. OWNERSHIP OF DOCUMENTS**

1. Once the BRDC has been compensated for services performed, all documents, including, but not limited to reports, and maps prepared in connection with or related to the scope of services, shall be the property of the City.
2. The City's ownership of these documents includes all incidental rights, whether or not the work for which they were prepared has been performed.
3. Article V, Section A shall apply whether the Agreement is terminated by the completion of the services, by the expiration of this Agreement under Article IV, or in accordance with other provisions of this Agreement.
4. Notwithstanding the foregoing, the BRDC shall have the right, at its sole cost, to make copies of the documents.

**B. AUDIT AND INSPECTION OF RECORDS**

1. At any time during normal business hours and as often as the City deems necessary, the BRDC and any or all subcontractors shall make available to the City for examination at reasonable locations within the City/County of San Diego all data and records relating to all matters covered by this Agreement. The BRDC and all subcontractors will permit the City to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered in this Agreement.
2. The BRDC and subcontractors shall maintain such data and records for a period of three (3) years following receipt of the final payment of this Agreement. With respect to receipts, canceled checks, and other evidence of payments for which the BRDC is reimbursed by the City pursuant to this Agreement, the BRDC shall maintain such documentation at its principal place of business in the City of San Diego for the required period of time. With respect to all other records covered by this Article V, Section B, if the BRDC does not make them available within the City of San Diego, then the BRDC shall pay all City's travel related costs to audit records associated with this Agreement where records are maintained.

**C. FINANCIAL REPORTS**

The BRDC shall provide an audited financial statement of the District within ninety (90) days after the end of its fiscal year. The financial statements must be prepared in accordance with Generally Accepted Accounting Principles and audited by an independent Certified Public Accountant (CPA) in accordance with Generally Accepted Auditing Standards (GAAS). The statements must include a Statement of Expenditures of the District's funds identified in the same expenditure classifications as contained in the City's final budget and show a comparison to the budget amounts, and a Statement of

Compliance with the terms of this Agreement signed by the BRDC. Failure to comply with these requirements could result in suspension of any current payments or possible future funding.

## **ARTICLE VI - TERMINATION**

### **A. CITY'S RIGHT TO TERMINATE FOR DEFAULT**

1. If the BRDC fails to perform or adequately perform any obligation required by this Agreement, the BRDC's failure shall constitute a default. The Mayor or designee shall promptly give the BRDC written notice of the occurrence of the default, and shall allow the BRDC thirty (30) days thereafter to cure the default, or to submit a written plan of action to cure such a default within a reasonable and safe period of time thereafter. Failure to cure the default or timely submit the plan of action within the thirty-day period, or failure to adhere to the plan of action, shall entitle the City Council to terminate this Agreement in accordance with San Diego Municipal Code section 65.0212.
2. Notwithstanding the foregoing, if the nature of the default could endanger the public's health and safety, the BRDC shall cure the default within twenty-four (24) hours of receipt of notice of the default and application of this Article IV, Section A of the Agreement. If the BRDC fails to actually and timely cure the default, then the City Council may, in its sole and absolute discretion, terminate this Agreement.

### **B. NOTICE**

1. The City Council may terminate this Agreement with the BRDC at any time provided:
  - (a) a public hearing is held on the City's intention to terminate this Agreement with the BRDC;
  - (b) the BRDC is provided thirty (30) calendar days' notice of the public hearing on the City's intention to terminate this Agreement;
  - (c) a notice of the public hearing is mailed at least fifteen (15) calendar days prior to the public hearing to each property owner within the District; and
  - (d) the City Council determines at the conclusion of the public hearing that it is in the best interests of the District to terminate this Agreement with the BRDC.
2. Upon termination of this Agreement, the City shall resume administration of Contracts for Goods and Contracts for Services for the District as defined in San Diego Municipal Code section 65.0202. The BRDC shall transmit to the City all funds, books, records, data, equipment and other assets of the District no later than thirty (30) calendar days after receipt of written notice of termination. Until



the actual transfer of these assets is complete, the BRDC shall continue to administer the Contracts for Goods and Contracts for Services for the District so that there is no interruption in or loss of service to property owners within the District.

**C. CITY'S RIGHT TO TERMINATE FOR BANKRUPTCY OR ASSIGNMENT FOR THE BENEFIT OF CREDITORS**

If the BRDC files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to or demand upon the BRDC, immediately cancel and/or terminate this Agreement, and terminate each and every right of the BRDC, and any person claiming any rights by or through the BRDC under this Agreement.

**D. NO WAIVER OF OTHER REMEDIES**

The rights and remedies of the City enumerated in this Agreement are cumulative and shall not limit the City's rights under any other provision of this Agreement or the San Diego Municipal Code, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the City against the BRDC.

**E. BRDC'S RIGHT TO TERMINATE**

BRDC may terminate this agreement ninety (90) calendar days after providing a written notice of its intent to terminate to the City. The BRDC shall transmit to the City all funds, books, records, data, equipment and other assets of the District no later than ninety (90) calendar days of issuance of written notice of termination. Until the actual transfer of these assets is complete, the BRDC shall continue to administer the Contracts for Goods and Contracts for Services for the District so that there is no interruption in or loss of service to property owners within the District.

**ARTICLE VII - INDEPENDENT CONTRACTOR AND DISTRICT MANAGEMENT**

**A. DELEGATION OF DUTIES**

The BRDC is an independent contractor. The BRDC will oversee the administration of the District activity through the engagement of one or more contractors to provide routine maintenance services to include trash collection and disposal, graffiti removal, repair, landscaping and lighting improvements. Accordingly, the BRDC duties specified in this Agreement may not be delegated by the BRDC without the prior written consent of the City.

**B. CONTACT**

1. The BRDC agrees that a member of the BRDC ("BRDC Representative") shall be the primary contact between the BRDC and the City for the purposes of this

Agreement (see Exhibit B). The BRDC Representative shall coordinate the BRDC's activities for the engagement and shall participate in all phases of the engagement. In order to simplify invoice processing, it is agreed by the BRDC that the BRDC Representative will act as billing agent for work provided by the BRDC. BRDC shall notify the City within ten (10) days of replacement of the BRDC Representative and shall provide an amended Exhibit B to reflect the replacement.

2. The BRDC's management of the services of this Agreement is of substantial concern and importance to the City, requiring coordination with City services. The quality of performance will reflect on the City and its management. Accordingly, the City requires the BRDC to inform the City on a regular basis of any changes in the Officers of the BRDC and of the identity of its subcontractors and their areas of responsibility.
3. The Mayor or designee ("City Representative") shall be the primary contact between the City and BRDC for purposes of this Agreement (see Exhibit B). The City shall notify the BRDC within ten (10) days of replacement of the City Representative and shall provide an amended Exhibit B to reflect the replacement..

#### **ARTICLE VIII - COVENANTS AND CONDITIONS**

All provisions hereof expressed as either covenants or conditions on the part of the City or the BRDC to be performed or observed shall be deemed to be both covenants and conditions.

#### **ARTICLE IX - COMPLIANCE WITH CONTROLLING LAW**

The BRDC shall comply with all applicable laws, rules, regulations, ordinances, resolutions and policies of the federal, state, and local governments as they pertain to this Agreement. In addition to the foregoing, the BRDC shall comply immediately with any and all directives issued by the City or its authorized representatives under authority of any laws, rules, ordinances, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

#### **ARTICLE X - ACCEPTABILITY OF WORK**

The City shall decide any and all questions that may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to the BRDC, the acceptable completion of this Agreement, and the amount of compensation due. In the event the BRDC believes that any requirement of the City interferes with or affects the independence of the BRDC, the BRDC shall confer with the City in order to resolve any possible conflict. In the event the BRDC and the City cannot agree as to the quality or acceptability of the work, the manner of performance and/or the compensation payable to the BRDC in this Agreement, the City or the BRDC shall give to the other written notice thereof. No later than ten (10)

calendar days thereafter, the BRDC and the City shall each prepare a written report that supports its position and file the same with the City and the other party. Thereafter, the City shall, with reasonable diligence, determine the quality or acceptability of the work, the manner of performance, and/or the compensation payable to the BRDC. This is not intended to be in any arbitration dispute between the parties of this Agreement.

#### **ARTICLE XI – INFORMAL DISPUTE RESOLUTION**

If the BRDC and the City have any dispute as to their respective rights and obligations under this Agreement, or the meaning or interpretation of any provisions hereof, they shall first attempt to resolve such disputes by informal discussion between their respective representatives. Within five (5) calendar days of determining the existence of any such dispute, the party determining there is such dispute shall give written notice of the existence of the dispute and the need to meet informally to resolve such dispute. The parties shall endeavor thereafter to meet within five (5) days of the second party's receipt of such notice, or at such time thereafter as is reasonable under the circumstances.

#### **ARTICLE XII - INDEMNIFICATION**

The BRDC agrees to defend, indemnify, protect and hold the City, and all of its officers, agents and employees harmless from any and all actions, suits, proceedings, liability, claims, demands for, damages or injuries to, any person, including injury to the BRDC's officers, agents, and employees, and all claims that may arise from or are directly connected with or attributable to the negligence or failure to perform professional services or other obligations of this Agreement, or are caused or claim to be caused by the acts or omissions of the BRDC, its officers, agents or employees, and all expenses of investigating and defending against same; provided, however, that this duty to defend, indemnify and hold harmless shall not include any claim arising from the established sole negligence or willful misconduct of the City, its officers, agents or employees.

#### **ARTICLE XIII - INSURANCE**

##### **A. PREREQUISITES TO COMMENCEMENT OF WORK.**

1. Prior to the execution of this Agreement by the Parties and approval by the City Attorney in accordance with Charter Section 40, and prior to BRDC's performance of its obligations and/or duties under this Agreement, BRDC shall complete each of the following:
  - (a) obtain City approval of each insurance company (or companies), as required in Section B below;
  - (b) obtain all insurance coverage required in Sections 13(C); 13(D); and 13(E), below;

- (c) obtain, and provide to the City, insurance certificates evidencing all insurance coverage required in Sections 13(C); 13(D); and 13(E), below; and
    - (d) confirm that all insurance policies and insurance certificates contain the specific provisions required by Sections 13(C); 13(D); and 13(E), below.
  - 2. BRDC shall not allow any subcontractor to commence work on a subcontract in connection with this Agreement, unless and until all insurance required of the subcontractor, as described in Sections 13(C), 13(D), and 13(E), below, has been obtained.
- B. INSURANCE COMPANIES.** All insurance coverage required in Sections 13(C), 13(D), and 13(E), below, shall be carried only by insurers that have been rated "A-, VI" or better, by the current A.M. Best Key Rating Guide, that are licensed to do business in the State of California, and that have been approved by the City. The City will accept insurance provided by non-admitted "surplus lines" carriers, only if the carrier is authorized to do business in the State of California and is shown on the List of Eligible Surplus Lines Insurers.
- C. COMMERCIAL GENERAL LIABILITY INSURANCE.**
- 1. At all times during the term of this Agreement, BRDC shall maintain, in full force and effect, Commercial General Liability Insurance, written on an ISO Occurrence form CG 00 01 07 98, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all personal injury, bodily injury, and property damage in the amount of \$1,000,000 per occurrence, subject to an annual aggregate of \$2,000,000.
  - 2. The policy shall expressly provide that:
    - (a) all defense costs shall be outside the limits of the policy; and
    - (b) the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.
  - 3. The policy shall be endorsed to expressly provide that:
    - (a) The City of San Diego, its elected officials, officers, agents, employees, and representatives are named as additional insureds; and
    - (b) the policy is primary and non-contributory to any insurance that may be carried by the City.
  - 4. There shall be no endorsement or modification of the policy limiting the scope of coverage for insured vs. insured claims, or for contractual liability.

**D. COMMERCIAL AUTOMOBILE LIABILITY INSURANCE.**

1. At all times during the term of this Agreement, BRDC shall maintain in full force and effect Commercial Automobile Liability Insurance for all of Corporation's automobiles (including owned, hired, and non-owned automobiles), written on an ISO form CA 00 01 12 90 or a later version of this form, or an equivalent form providing coverage at least as broad, which shall cover liability arising from any and all bodily injury and property damage, for a combined single limit of \$1,000,000 per occurrence.
2. The policy shall expressly provide that the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.
3. The policy shall be endorsed to expressly provide that The City, its elected officials, officers, agents, employees, and representatives are named as additional insureds.

**E. WORKERS' COMPENSATION INSURANCE.**

1. At all times during the term of this Agreement, BRDC shall maintain in full force and effect Workers' Compensation Insurance for all of BRDC's employees who are subject to this Agreement, to the extent required by the State of California, providing a minimum of \$1,000,000 of employers' liability coverage.
2. The policy shall expressly provide that the policy cannot be cancelled or materially changed, except after thirty calendar days written notice by the insurer to the City by certified mail.
3. The policy shall be endorsed to expressly provide that the insurer waives the right of subrogation against The City of San Diego, its elected officials, officers, agents, employees, and representatives.

**F. ENDORSEMENTS. All endorsements required under Sections 13(C), 13(D), and 13(E) above shall be in full force and effect for the entire term of this Agreement.****G. CITY'S RIGHT TO REQUEST AND REVIEW CORPORATION'S INSURANCE POLICIES. The City reserves its right to request, and BRDC shall immediately submit to the City upon the City's request, copies of any policy required in Sections 13(C), 13(D), and 13(E) above, and its right to review, at any time, BRDC's insurance coverage, limits, deductibles, and self-insured retentions to determine if they are acceptable to the City. If the City determines that such insurance coverage, limits, deductibles, and/or self-insured retentions are unacceptable, the City and BRDC shall amend this Agreement to**

adjust such insurance coverage, limits, deductibles, and/or self-insured retentions to a level acceptable to the City, and BRDC shall comply with any such amendment.

- H. **DEDUCTIBLES AND SELF-INSURED RETENTIONS.** All deductibles and self-insured retentions on any policy shall be the responsibility of BRDC, and shall be disclosed on the insurance certificates and acceptable to the City.
- I. **CORPORATION'S LIABILITY NOT LIMITED TO INSURANCE COVERAGE.** BRDC's liability, including, but not limited to, BRDC's indemnity obligations under this Agreement, shall not be deemed limited in any way to the insurance coverage required in this Article.
- J. **MODIFICATIONS AFFECTING CITY'S EXPOSURE TO LOSS.** BRDC shall not modify any policy (or endorsement thereto), which increases the City's exposure to loss for the duration of this Agreement.
- K. **ADDITIONAL INSURANCE.** BRDC may obtain additional insurance not required by this Agreement.
- L. **EXPIRATION OF POLICIES.** At least thirty calendar days prior to the expiration of each insurance policy required herein, BRDC shall provide the City an insurance certificate, showing that a new or extended policy has been obtained which meets the requirements of this Agreement.
- M. **REQUIREMENT TO MAINTAIN INSURANCE COVERAGE.** BRDC's maintenance of the insurance coverage required in Sections 13(C), 13(D), and 13(E) above is a material provision of this Agreement. Any failure by BRDC to maintain or renew such coverage, or to provide the City evidence of renewal, during the term of this Agreement, shall constitute a material breach of contract.

#### ARTICLE XIV - CONFLICT OF INTEREST

- A. The BRDC is subject to all federal, state, and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595, herein referred to collectively as "Codes."
- B. If, in performing the Professional Services set forth in this Agreement, the BRDC makes, or participates in, a "governmental decision" as described in title 2, section 18701(a)(2) of the California Code of Regulations, or performs the same or substantially all the same duties for the City that would otherwise be performed by a City employee holding a position specified in the department's conflict of interest code, the BRDC shall be subject to a conflict of interest code requiring the completion of one or more statements of economic interests disclosing the BRDC's relevant financial interests.

- C. Statements of economic interests shall be made on Fair Political Practices Commission Form 700 and filed with the City Clerk. The BRDC shall file a Form 700 (Assuming Office Statement) within thirty calendar days of the City's determination that the BRDC is subject to a conflict of interest code. The BRDC individuals subject to the Codes shall also file a Form 700 (Annual Statement) on or before April 1, disclosing any financial interests held during the previous calendar year for which the BRDC was subject to a conflict of interest code.
- D. If the City requires the BRDC to file a Statement of Economic Interests as a result of the Professional Services performed, BRDC shall be considered a "City Official" subject to the provisions of the City of San Diego Ethics Ordinance, including the prohibition against lobbying the City for one year following the termination of this Agreement.
- E. The BRDC shall establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business, or other relationships.

If the BRDC violates any conflict of interest law, the violation shall be grounds for immediate termination of this Agreement. Further, the violation subjects the BRDC to liability to the City for attorneys' fees and all damages sustained as a result of the violation. It is hereby understood and agreed that the parties to this Agreement have read and are aware of the provisions of sections 1090 et seq. and sections 87100 et seq. of the California Government Code relating to conflicts of interest for public officers and employees, as well as the conflict of interest codes of the City. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of the City relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the City shall immediately terminate this Agreement by giving written notice thereof. The BRDC agrees to abide with sections 87100 et. seq. of the California Government Code during the term of the Agreement. The City may determine that the BRDC is subject to a conflict of interest code and is required to complete one or more statements of economic interest disclosing relevant financial interests. Upon the City's request, the BRDC shall submit the necessary documentation.

#### **ARTICLE XV – ATTORNEYS' FEES**

If either party brings any action or proceeding to enforce, protect or establish any right or remedy arising out of or based upon this Agreement, including, but not limited to, the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to recovery of its costs and reasonable attorneys' fees.

#### **ARTICLE XVI - NOTICES**

Except as provided in Section B 1 (d) and (e) of Article I, in all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage paid. When so given, such notice

shall be effective from the date of mailing of the same. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to the City shall be addressed to City of San Diego, Park and Recreation Department, Open Space Division, 1250 6<sup>th</sup> Avenue, 4<sup>th</sup> Floor, MS-804A, San Diego, California 92101. Notice to the BRDC shall be addressed to Bird Rock Community Development Corporation, 5666 La Jolla Boulevard #168, La Jolla, California 92037. Either party may change the address for its receipt of notice hereunder by giving notice thereof in the manner herein specified. Nothing herein contained shall preclude or render inoperative service or such notice in the manner provided by law.

## **ARTICLE XVII - CONTRACTS AWARDED BY THE BRDC**

The BRDC shall comply with the San Diego Municipal Code sections 65.0212 (c)(6) and 65.0214 for the award of any contract pertaining to the District.

## **ARTICLE XVIII - NON-DISCRIMINATION REQUIREMENTS**

### **A. EQUAL OPPORTUNITY CONTRACTING PROGRAM**

The BRDC and each of its Subcontractors shall comply with the City's Equal Opportunity Contracting Consultant Requirements which is attached hereto as Exhibit C and incorporated herein by this reference.

### **B. NON-DISCRIMINATION ORDINANCE**

The BRDC shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. The BRDC shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. The BRDC understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between the BRDC and any subcontractors, vendors and suppliers.

### **C. COMPLIANCE INVESTIGATIONS**

Upon the City's request, the BRDC agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the BRDC has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by the BRDC for each subcontract or supply contract. The BRDC further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's NONDISCRIMINATION IN CONTRACTING ORDINANCE (Municipal Code sections 22.3501-22.3517.) The BRDC understands and agrees that violation of this clause shall be considered a material breach of this Agreement and may result in remedies being ordered against the BRDC up to and including contract termination, debarment, and other sanctions for violation of the provisions of the NONDISCRIMINATION IN



CONTRACTING ORDINANCE. The BRDC further understands and agrees that the procedures, remedies and sanctions provided for in the NONDISCRIMINATION ORDINANCE apply only to violations of said NONDISCRIMINATION ORDINANCE.

#### **ARTICLE XIX - STORM WATER POLLUTION PREVENTION**

The BRDC and each of its Subcontractors shall comply with the Storm Water Management And Discharge Control ordinance, San Diego Municipal Code section 43.0301, which is attached hereto as Exhibit D and incorporated herein by this reference, in performing or delivering services in the District regardless of location.

#### **ARTICLE XX - DRUG-FREE WORKPLACE**

The BRDC agrees to comply with the City's Drug Free Workplace requirements. Every person or organization awarded a contract by the City of San Diego for the provision of services shall certify to the City that it will provide a drug-free workplace. Any subcontract entered into by the BRDC pursuant to this Agreement shall contain this provision.

#### **ARTICLE XXI - AMERICANS WITH DISABILITIES ACT**

Every person or organization awarded a contract, lease, or grant by the City of San Diego acknowledges and agrees that it is aware of and will comply with Council Policy 100-04, adopted by Resolution No. 282153 relating to the federally-mandated Americans with Disabilities Act ("ADA"). Contractors and subcontractors will be individually responsible for their own ADA program.

#### **ARTICLE XXII - EMPLOYMENT OF CITY STAFF**

This Agreement may be unilaterally and immediately terminated by the City if the BRDC employs an individual, who, within twelve (12) months immediately preceding such employment did, in the individual's capacity as a City officer or employee, participate in, negotiate with or otherwise have an influence on the recommendation made to the City Council in connection with the selection of the BRDC for this project.

#### **ARTICLE XXIII - MISCELLANEOUS PROVISIONS**

##### **A. MUNICIPAL POWERS**

Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

##### **B. CALIFORNIA LAW**

This Agreement shall be construed and interpreted in accordance with the laws of the State of California. The BRDC covenants and agrees to submit to the personal jurisdiction of any state court in the City of San Diego, State of California for any dispute, claim or matter arising out of or related hereto.

**C. INTEGRATED AGREEMENT**

This Agreement including Attachments and/or Exhibits contains all of the agreements of the parties and all prior negotiations and agreements are merged herein. This Agreement cannot be amended or modified except by written agreement, and mutually agreed upon by the City and the BRDC.

**D. SEVERABILITY**

The unenforceability, invalidity or illegality of any provision of this Agreement shall not render any other provision unenforceable, invalid or illegal.

**E. WAIVER**

The failure of the City to enforce a particular condition or provision of this Agreement shall not constitute a waiver of that condition or provision or its enforceability.

**F. HEADINGS**

All headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

**G. COUNTERPARTS**

This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.

IN WITNESS WHEREOF, this Agreement executed by City of San Diego acting by and through its Mayor or designee and by the BRDC pursuant to Resolution No. \_\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
Rick Reynolds  
Assistant Chief Operating Officer,  
City of San Diego

Date: \_\_\_\_\_

BIRD ROCK DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
Charles Patton, President

Date: 7/13/07

ATTEST

By: \_\_\_\_\_  
George Sutton, Secretary

Date: 7/13/07

I HEREBY APPROVE the form and legality of the foregoing Agreement this day of \_\_\_\_\_, 2007.

MICHAEL J. AGUIRRE, City Attorney

By: \_\_\_\_\_  
Elizabeth Coleman  
Deputy City Attorney

**LIST OF EXHIBITS**

- A. Budget Submission Format
- B. Identification of BRDC Representative and City Representative
- C. Equal Opportunity Contracting Program [EOCP] Consultant Requirements
- D. Storm Water Prevention Program

001417

## Exhibit A – BUDGET SUBMISSION FORMAT

Park and Recreation Department - Open Space Division

Maintenance Assessment Districts Program

Summary of Fiscal Year 2007 (07-01-06 to 06-30-07) Final Budget

SAMPLE

Bird Rock Maintenance Assessment District

Fund 70281

|   | FY 2005<br>Actuals | FY 2006<br>Estimate  | FY 2007<br>Proposed  |
|---|--------------------|----------------------|----------------------|
| <b><u>District Non-Personnel Costs</u></b>                              |                    |                      |                      |
| Contract Services   |                    |                      |                      |
| Unclassif Prof Services - BRDC Admin. Overhead (4151)                   | \$ -               | \$ 10,312.50         | \$ 24,750.00         |
| Landscape Services (4217)   | \$ -               | \$ -                 | \$ -                 |
| Misc. Contractual Services - Security Services (4222)                   | \$ -               | \$ 10,000.00         | \$ 10,000.00         |
| Other Services - City Forces (4226)                                     | \$ -               | \$ -                 | \$ -                 |
| Reimbursement Agreements (4240)   | \$ -               | \$ 38,315.89         | \$ -                 |
| Other Incidental Costs (3101, 3214, 3243, 4313)                         | \$ -               | \$ 25,005.40         | \$ 25,000.00         |
| Utilities: Water / Sewer / Electrical (5101, 5204, 5205) <sup>(1)</sup> | \$ -               | \$ -                 | \$ -                 |
| Outlay  | \$ -               | \$ -                 | \$ -                 |
| Management Costs (49591)  | \$ -               | \$ 4,166.67          | \$ 10,000.00         |
| <b>Subtotal Non-Personnel Costs</b>                                     | <b>\$ -</b>        | <b>\$ 87,800.46</b>  | <b>\$ 69,750.00</b>  |
| <b>TOTAL</b>  | <b>\$ -</b>        | <b>\$ 87,800.46</b>  | <b>\$ 69,750.00</b>  |
| <b><u>District Revenues</u></b>   |                    |                      |                      |
| Special Assessments (71XXX-72XXX)                                       | \$ -               | \$ 165,006.90        | \$ 165,006.90        |
| Interest Earnings (75XXX)   | \$ -               | \$ 700.00            | \$ 1,400.00          |
| City Contributions  |                    |                      |                      |
| Environmental Growth Fund (79910) <sup>(2)</sup>                        | \$ -               | \$ -                 | \$ -                 |
| Gas Tax Fund (79902) <sup>(2)</sup>                                     | \$ -               | \$ -                 | \$ -                 |
| General Fund (79905) <sup>(2)</sup>                                     | \$ -               | \$ -                 | \$ -                 |
| Miscellaneous Revenue   | \$ -               | \$ -                 | \$ -                 |
| <b>TOTAL</b>  | <b>\$ -</b>        | <b>\$ 165,706.90</b> | <b>\$ 166,406.90</b> |
| <b><u>District Reserves</u></b>   |                    |                      |                      |
| <b>Beginning Fund Balance</b>   | <b>\$ -</b>        | <b>\$ -</b>          | <b>\$ 77,906.44</b>  |
| Change in Fund Balance  | \$ -               | \$ 77,906.44         | \$ 96,656.90         |
| <b>Year End Operating Reserves</b>                                      | <b>\$ -</b>        | <b>\$ 77,906.44</b>  | <b>\$ 174,563.34</b> |
| <b><u>Fund Balance</u></b>  |                    |                      |                      |
| Unallocated Reserve (not earmarked) (4903)                              | \$ -               | \$ -                 | \$ -                 |
| 10% Reserve Required by Auditors (4905)                                 | \$ -               | \$ -                 | \$ 6,975.00          |
| Allocated Reserve (future projects or needs) (49051)                    | \$ -               | \$ -                 | \$ 167,588.34        |
| <b>TOTAL</b>  | <b>\$ -</b>        | <b>\$ -</b>          | <b>\$ 174,563.34</b> |
| <b><u>Target Reserves</u></b>   |                    |                      |                      |
| Minimum Reserve: 10% of Operating Budget                                | \$ -               | \$ 8,780.05          | \$ 6,975.00          |
| Maximum Reserve: Six Months Operating Budget                            | \$ -               | \$ 43,900.23         | \$ 34,875.00         |
| Assessment Rate   | \$ -               | \$ 90.00             | \$ 90.00             |
| Number of Equivalent Benefit Units                                      | 0.00               | 1,833.41             | 1,833.41             |

<sup>(1)</sup> Water rate subject to a 6% increase on 7/01/05, 2% increase on 01/01/06, and a 6% increase on 7/01/06.<sup>(2)</sup> Fiscal Year 2007 subject to change pending approval of new rate per square foot/acreage.

001418

**EXHIBIT A – SAMPLE BUDGET DETAIL SUBMISSION (Sample)**

Open Space Division - Maintenance Assessment Districts

Worksheet for FY2007 District Budget

Bird Rock - Fund No. 70281

| Object  |  | FY 2006             | FY 2007             |
|---------|--|---------------------|---------------------|
| Account | Program Element/Description                      | Estimate            | Proposed Budget     |
|         | <b>Budget Positions</b>                          | <b>0.00</b>         | <b>0.00</b>         |
| 1100    | Salaried Wages Budgeted                          | \$0.00              | \$0.00              |
| 1200    | Temporary Labor                                  | \$0.00              | \$0.00              |
| 2000    | Fringe   | \$0.00              | \$0.00              |
|         | <b>Total Labor &amp; Fringe</b>                  | <b>\$0.00</b>       | <b>\$0.00</b>       |
| 3101    | Office Supplies (Equip & Supplies)               | \$7,500.00          | \$7,500.00          |
| 3102    | Postage/ Mailing                                 | \$0.00              | \$0.00              |
| 3212    | Soil & Conditioner                               | \$0.00              | \$0.00              |
| 3214    | Garden Nur Stock                                 | \$7,500.00          | \$7,500.00          |
| 3243    | Dry Goods/Wearing Apparel (seasonal decorations) | \$10,000.00         | \$10,000.00         |
| 3298    | Unclas Mat & Supp                                | \$0.00              | \$0.00              |
| 4114    | Prelim Eng - In House                            | \$0.00              | \$0.00              |
| 4118    | Engineering Service                              | \$0.00              | \$0.00              |
| 4151    | Unclasif Prof Services (BRDC Admin. Overhead)    | \$10,312.50         | \$24,750.00         |
| 4217    | Landscaping Services                             | \$0.00              | \$0.00              |
| 4222    | Misc Cont Serv (Security Svcs.)                  | \$10,000.00         | \$10,000.00         |
| 4226    | Cont Serv-City Force                             | \$0.00              | \$0.00              |
| 4240    | Reimbursement Agreements                         | \$38,315.89         | \$0.00              |
| 4313    | Photo and Blueprint                              | \$5.40              | \$0.00              |
| 4460    | Training   | \$0.00              | \$0.00              |
| 4691    | Motive Equip Rental -Pool                        | \$0.00              | \$0.00              |
| 4692    | Motive Equip Rental-Usage                        | \$0.00              | \$0.00              |
| 4693    | Mot Eq Rental -Assignment                        | \$0.00              | \$0.00              |
| 4881    | Transfers - Cash (Management Fund)               | \$0.00              | \$0.00              |
| 49591   | Special Districts Administration                 | \$4,166.67          | \$10,000.00         |
| 4951    | Overhead Billed (20% of wages)                   | \$0.00              | \$0.00              |
|         |  | <b>\$87,800.46</b>  | <b>\$69,750.00</b>  |
| 4881    | <b>Capital Improvements Program</b>              | \$0.00              | \$0.00              |
| 5101    | Electric Services                                | \$0.00              | \$0.00              |
| 5204    | Water Serv-Incl Hydr Rent                        | \$0.00              | \$0.00              |
| 5205    | Sewer Service Charge (Storm drain)               | \$0.00              | \$0.00              |
|         | <b>Total Utilities</b>                           | <b>\$0.00</b>       | <b>\$0.00</b>       |
| 6010    | Outlay   | \$0.00              | \$0.00              |
|         | <b>Total Costs / Appropriations:</b>             | <b>\$87,800.46</b>  | <b>\$69,750.00</b>  |
|         | <b>Fund Balance</b>                              |                     |                     |
| 4903    | Unallocated Reserve (not earmarked)              | \$0.00              | \$0.00              |
| 4905    | 10% Reserve Required by Auditors                 | \$0.00              | \$6,975.00          |
| 49051   | Allocated Reserve (future projects or needs)     | \$0.00              | \$167,588.34        |
| 4905    | <b>Contingency Reserve</b>                       | <b>\$77,906.44</b>  | <b>\$174,563.34</b> |
|         | <b>GRAND TOTAL</b>                               | <b>\$165,706.90</b> | <b>\$244,313.34</b> |

001419

**EXHIBIT B**  
**IDENTIFICATION OF BRDC REPRESENTATIVE AND CITY REPRESENTATIVE**

Pursuant to Article VII, Section B, Item 4:

**The Bird Rock Development Corporation (BRDC) Representative shall be:**

Joseph LaCava,

---

Contact Phone Number: (619) 972-4705

**The City Representative shall be:**

Clay Bingham, Assistant Deputy Director

---

Contact Phone Number: (619) 533-6724

## EXHIBIT C

**EQUAL OPPORTUNITY CONTRACTING PROGRAM [EOCP]  
CONSULTANT REQUIREMENTS**

CONTENTS:

- A. City's Equal Opportunity Commitment
  - B. Equal Opportunity Agreement
  - C. Consultant Work Force
  - D. Equal Employment Opportunity Plan
  - E. Listing of Subconsultants
  - F. Sub consultant Participation Level
  - G. Definitions
  - H. Certification
  - I. Contract Activity Reports
- A. The City of San Diego is strongly committed to equal opportunity in solicitation of professional service consultants. The City encourages prime consultants to share this commitment. Prime consultants are encouraged to take positive steps to diversify and expand their subconsultant solicitation base and to offer consulting opportunities to all eligible subconsultants.  
Consultant shall comply with requirements of San Diego Ordinance No. 18173, Section 27.2701 through 22.2708, Equal Employment Opportunity Outreach Program [see Attachment 1].
- B. All proposers shall sign, submit with proposal package, and agree to be bound by the *Equal Opportunity Agreement* [see Attachment 2].
- C. Consultant Work Force
- 1. Prior to award of contract, successful proposer must submit to the City's EOCP office a *Work Force Report* [see Attachment 3] or an *Equal Employment Opportunity [EEO] Plan*.
  - 2. If under representations are noted in the *Work Force Report* when compared to County Labor Force Availability data, Consultant will be requested by EOCP staff to submit an *Equal Employment Opportunity Plan*.
- D. An acceptable *Equal Employment Opportunity Plan* must include at least the following assurances that:
- 1. The Consultant will maintain a working environment free of discrimination, harassment, intimidation and coercion at all sites and in all facilities at which the contractor's employees are assigned to work;
  - 2. A responsible official is designated to monitor all employment related activity to ensure the company EEO Policy is being carried out and to submit reports relating to EEO provisions;
  - 3. The Consultant disseminates and reviews its EEO Policy with all employees at least once a year, posts the policy statement and EEO posters on all company bulletin boards and job sites, and documents every dissemination, review and



001421

posting with a written record to identify the time, place, employees present, subject matter, and disposition of meetings;

4. The Consultant reviews, at least annually, all supervisors' adherence to and performance under the EEO Policy and maintains written documentation of these reviews;
5. The Consultant discusses its EEO Policy Statement with subconsultants with whom it anticipates doing business, includes the EEO Policy Statement in its subcontracts, and provides such documentation to the City upon request;
6. The Consultant documents and maintains a record of all bid solicitations and outreach efforts to and from subconsultants, consultants and other businesses;
7. The Consultant disseminates its EEO Policy externally through various media, including the media of people of color and women, in advertisements to recruit, maintains files documenting these efforts, and provides copies of these advertisements to the City upon request;
8. The Consultant disseminates its EEO Policy to union and community organizations;
9. The Consultant provides immediate written notification to the City when any union referral process has impeded the Consultant's efforts to maintain its EEO Policy;
10. The Consultant maintains a current list of recruitment sources, including those outreaching to people of color and women, and provides written notification of employment opportunities to these recruitment sources with a record of the organizations' responses;
11. The Consultant maintains a current file of names, addresses and phone numbers of each walk-in applicant, including people of color and women, and referrals from unions, recruitment sources, or community organizations with a description of the employment action taken;
12. The Consultant encourages all present employees, including people of color and women employees, to recruit others;
13. The Consultant maintains all employment selection process information with records of all tests and other selection criteria;
14. The Consultant develops and maintains documentation for on-the-job training opportunities and/or participates in training programs for all of its employees, including people of color and women, and establishes apprenticeship, trainee, and upgrade programs relevant to the Consultant's employment needs;
15. The Consultant conducts, at least annually, an inventory and evaluation of all employees for promotional opportunities and encourages all employees to seek and prepare appropriately for such opportunities;
16. The Consultant ensures the company's working environment and activities are non-segregated except for providing separate or single-user toilets and necessary changing facilities to assure privacy between the sexes;
17. The Consultant establishes and documents policies and procedures to ensure job classifications, work assignments, promotional tests, recruitment and other personnel practices do not have a discriminatory effect; and
18. The Consultant is encouraged to participate in voluntary associations which assist in fulfilling one or more of its non-discrimination obligations. The efforts of

a consultant association, consultant/community professional association, foundation or other similar group of which the Consultant is a member will be considered as being part of fulfilling these obligations, provided the Consultant actively participates.

E. Listing of Subconsultants

1. Proposer shall submit a *Subconsultants List* [see Attachment 4] indicating Scope of Services, percentage of contract, dollar amount of contract, certification status, and where certified.
2. Subconsultants and vendors must be named on the *Subconsultants List* if they receive more than \$10,000 or more than one-half of one percent [.5%], whichever amount is less.
3. Proposer shall also submit subconsultant commitment letters on subconsultant letterhead, no more than one page each, from all proposed subconsultants to acknowledge their commitment to the team, Scope of Services, and percent of participation in the project.

F. Subconsultant Participation Level

1. Projects valued at \$25,000 or more have a voluntary subconsultant participation level goal of 15%. Goals are achieved by contracting with any combination of Minority Business Enterprise [MBE], Women Business Enterprise [WBE], Disadvantaged Business Enterprise [DBE], Disabled Veteran Business Enterprise [DVBE], or Other Business Enterprise [OBE] level.
2. Attainment of the 15% subconsultant participation level goal is strongly encouraged but strictly voluntary.
3. If the subcontractor participation level goal of 15% is not achieved, proposer is required to complete an *Outreach and Teaming Survey* [see Attachment 5] and submit it to:

City of San Diego Equal Opportunity Contracting Program [EOCP]

1010 Second Avenue, Fifth Floor

San Diego, CA 92101

Phone (619) 533-4464 Fax (619) 533-4474

The *Outreach and Teaming Survey* is due to EOCP five working days from date of notification of selection and must be received prior to award of contract.

Survey information will be used by EOCP staff to assist consultants with achieving subconsultant participation level goals on future City contracts.

G. Definitions

1. Certified "**Minority Business Enterprise**" [MBE] means a business which is at least fifty-one percent [51%] owned by African Americans, American Indians, Asians, Filipinos, and/or Latinos and whose management and daily operation is controlled by one or more members of the identified ethnic groups. In the case of a publicly-owned business, at least fifty-one percent [51%] of the stock must be owned by, and the business operated by, one or more members of the identified ethnic groups.
2. Certified "**Women Business Enterprise**" [WBE] means a business which is at least fifty-one percent [51%] owned by one or more women and whose management and daily operation is controlled by the qualifying party(ies). In the

case of a publicly-owned business, at least fifty-one percent [51%] of the stock must be owned by, and the business operated by, one or more women.

3. Certified **“Disadvantaged Business Enterprise” [DBE]** means a business which is at least fifty-one percent [51%] owned and operated by one or more socially and economically disadvantaged individuals and whose management and daily operation is controlled by the qualifying party(ies). In the case of a publicly-owned business, at least fifty-one percent [51%] of the stock must be owned by, and the business operated by, socially and economically disadvantaged individuals.
4. Certified **“Disabled Veteran Business Enterprise” [DVBE]** means a business which is at least fifty-one percent [51%] owned by one or more veterans with a service related disability and whose management and daily operation is controlled by the qualifying party(ies).
5. **“Other Business Enterprise” [OBE]** means any business which does not otherwise qualify as Minority, Woman, Disadvantaged or Disabled Veteran Business Enterprise.

#### H. Certification

1. The City of San Diego is a signatory to a Memorandum of Understanding [MOU] with the California Department of Transportation [CALTRANS], and therefore has adopted a policy regarding certification of MBE/WBE/DBE/DVBE firms. As a result of the MOU, an MBE, WBE or DBE is certified as such by any of the following methods:
  - a. Current certification by the City of San Diego as MBE, WBE, or DBE;
  - b. Current certification by the State of California Department of Transportation [CALTRANS] as MBE, WBE or DBE;
  - c. Current *interim certification* as MBE, WBE or DBE by any member agency of the San Diego Joint Agency Contracting Opportunities Task Force [JACO: County of San Diego, San Diego Unified Port District, San Diego County Water Authority, San Diego City Schools, San Diego Association of Governments, Metropolitan Transit Development Board, or the City of San Diego]; or
  - d. Current MBE, WBE or DBE certification from any participating agency in the statewide certified pool of firms known as CALCERT.
2. DVBE certification is received from the State of California's Department of General Services, Office of Small and Minority Business, (916) 322-5060.
- I. To permit monitoring of compliance, successful proposer shall submit to EOCP *Contract Activity Reports* [see Attachment 6] reflecting work performed by subconsultants.

**001424**

**ATTACHMENTS:**

- 1 San Diego Municipal Ordinance No. 18173, Section 22.701 through 22.2708
- 2 Equal Opportunity Agreement
- 3 Work Force Report
- 4 Subconsultants List
- 5 Outreach and Teaming Survey
- 6 Contract Activity Report
7. Consultant Certification for a Drug-Free Workplace  
Attachment 1 Consultant Evaluation Form

001429 ATTACHMENT (1): Municipal Code  
DIVISION 27  
EQUAL EMPLOYMENT OPPORTUNITY  
OUTREACH PROGRAM

**§ 22.2701 Purpose and Intent**

The overall objective of the City's Equal Employment Opportunity ("EEO") Program is to ensure that contractors doing business with or receiving funds from the City will not engage in unlawful discriminatory employment practices prohibited by State or Federal law. Such employment practices include, but are not limited to, the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship.

**§ 22.2702 Definitions**

Unless stated otherwise, the following definitions apply to this Division:

"City" means The City of San Diego and those agencies, boards, commissions and corporations authorized to act on behalf of, or as an agent for, the City of San Diego.

"Contract" means an agreement to provide labor, materials, supplies or services in the performance of a contract, franchise, concession or lease granted, let or awarded by or on behalf of the City.

"Contractor" means any person, firm, partnership, corporation, or combination thereof, who is selected to enter into, or actually enters into a contract with department heads and officers empowered by law to enter into contracts on behalf of the City for public works or improvements to be performed, or for a franchise, concession or lease of property, or for goods, services or supplies to be purchased, at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of, or collected by, the City.

"Equal Employment Opportunity Plan" means a document prepared by a contractor in accordance with a form and format supplied by the City which describes the contractor's plan of action.

"Gender" means the character of being male or female.

"Program Manager" means the Program Manager for the City's Equal Opportunity Contracting Program or his or her designee.

"Work Force Analysis" means a comparison of a contractor's Work Force Report with applicable County Labor Force Availability data.

"Work Force Report" means a report, in a format supplied by the City but compiled by the contractor, of the contractor's total work force which indicates the number of males and females in each identified ethnic group by occupational category.

**§ 22.2703 Scope**

Except as provided in Section 22.2704, this Division applies to all contractors except:

(a) Contractors and subcontractors who do less than a total of \$10,000 worth of business with the City during the preceding twelve (12) months or who have less than a total of fifteen (15) employees, except that contractors exempted by this Subsection shall be subject to audits pursuant to Section 22.2707 to determine if unlawful discriminatory employment practices are occurring.

(b) Contracts to which any city (other than The City of San Diego), county, district or other political subdivision, or any joint powers authority created under authority of law, or other public entity, or any other group or combination of the foregoing acting as a unit, is a party.

(c) Nonprofit charitable, educational, or religious associations or corporations, as evidenced by records on file with the City to be compiled for purposes of this Division in accordance with procedures established by the City Manager.

(d) Emergency contracts, if a written partial or full waiver is granted by the City Manager except that contractors exempted by this Subsection shall be subject to audits pursuant to Section 22.2707 to determine if unlawful discriminatory employment practices are occurring. The City Manager may grant a partial or full waiver from the requirements of this Division for an emergency contract only to the limited extent necessary in order to expedite the award of such contract. For purposes of this Section, the term "emergency" has the same meaning as in San Diego City Charter, Section 94.

**§ 22.2704 Mandatory Nondiscrimination Contract Clause**

Notwithstanding the provisions of Section 22.2703, every contract shall contain a nondiscrimination clause which shall read as follows:

Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime contractors shall ensure that their subcontractors comply with this Program. Nothing in this Section shall be interpreted to hold a prime contractor liable for any discriminatory practice of its subcontractors.

**§ 22.2705 Duty to Submit Reports**

(a) If a contract is competitively solicited, after the lowest responsible bidder has been determined and prior to the execution of the contract, the apparent low bidder shall submit to the Equal Opportunity Contracting Program a Work Force Report, on a City form, or an Equal Employment Opportunity Plan approved by the Program Manager.

If a contract is not competitively solicited, the contractor shall submit to the Equal Opportunity Contracting Program a Work Force Report or an Equal Employment Opportunity Plan approved by the Program Manager prior to tendering the signed contract documents to the City for signature.

(b) Staff will conduct a work force analysis on all Work Force Report submittals to determine whether or not an Equal Employment Opportunity Plan is required. If an Equal Employment Opportunity Plan is required, the contractor will submit a Plan for approval by the Program Manager.

(c) Any Equal Employment Opportunity Plan approved by the City shall not include quotas, goals or timetables for increasing women and minority employment and will not require terminating or laying off existing employees.

(d) If the apparent low bidder or contractor does not submit either a Work Force Report or Equal Employment Opportunity Plan as required by this Section, for purposes of awarding the contract only, the City Manager will ensure an administrative hearing is conducted by an independent hearing officer to determine if the contract should be awarded in accordance with City, State, and Federal law.

**§ 22.2706 Duty to Comply with Equal Employment Opportunity Plan**

A contractor for whom an Equal Employment Opportunity Plan has been approved by the City shall use best efforts to comply with that Equal Employment Opportunity Plan.

**§ 22.2707 Reviews**

(a) The Program Manager shall conduct periodic reviews of contractors to ensure that unlawful discrimination is not being practiced and Equal Employment Opportunity Plans are implemented.

(b) If the City Manager determines, after review, that the contractor has not implemented their Equal Employment Opportunity Plan and/or practices unlawful discrimination and corrective action has not occurred by the contractor after sufficient notice, the City Manager may recommend termination of the contract and debarment to the City Council.

## ATTACHMENT (2)

**EQUAL OPPORTUNITY AGREEMENT**

**NON-DISCRIMINATION CLAUSE:** Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Contractor shall ensure that its subcontractors comply with the City of San Diego's Equal Employment Opportunity Program.

**EQUAL EMPLOYMENT OPPORTUNITY (EEO):** Contractor has received, read, understands and agrees to be bound by the City of San Diego *Municipal Code*, Chapter II, Article 2, Division 27 (Equal Employment Opportunity Program) provided with the proposal package.

Contractor has submitted either a *Work Force Report* or an *Equal Employment Opportunity Plan* as required by Section 22.2705 of the City of San Diego *Municipal Code*.

City and Contractor agree that compliance with EEO provisions will be implemented, monitored, and reviewed by the City's Equal Opportunity Contracting Program (EOCP) staff.

**EQUAL OPPORTUNITY CONTRACTING:** Contractor has received, read, understands and agrees to be bound by the Equal Opportunity Contracting Program requirements described in the proposal package.

If requested, Contractor shall submit the *Outreach and Teaming Survey*. Contractor agrees to provide updated reports as requested by the City. Contractor agrees to insert equal opportunity compliance language in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor.

Project Name: \_\_\_\_\_ Bid No.: \_\_\_\_\_

Company Name: \_\_\_\_\_ Date: \_\_\_\_\_

Authorized Signature

Print Authorized Signature Name

(Revised 2/98)

001427



ATTACHMENT (3)

**THE CITY OF SAN DIEGO**  
**EQUAL OPPORTUNITY CONTRACTING PROGRAM**  
1010 SECOND AVENUE • SUITE 500 • SAN DIEGO, CA 92101  
(619) 533-4464 • FAX: 533-4474

## WORK FORCE REPORT

The objective of the Equal Employment Opportunity Program is to ensure that contractors doing business with the City, or receiving funds from the City, will not engage in unlawful discriminatory employment practices prohibited by State and Federal law. Such employment practices include, but are not limited to the following: employment, promotion or upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship.

NO OTHER FORMS WILL BE ACCEPTED

### CONTRACTOR IDENTIFICATION

Type of Contractor: ☐ Construction ☐ Vendor/Supplier ☐ Financial Institution ☐ Lessee/Lessor  
☐ Consultant ☐ Grant Recipient ☐ Insurance Company ☐ Other

Name of Company:

AKA/DBA:

Address (Corporate Headquarters, where applicable):

City County State Zip

Telephone Number: ( )

FAX Number: ( )

Name of Company CEO:

Address(es), phone and fax number(s) of company facilities located in San Diego County (if different from above):

Address:

City County State Zip

Telephone Number: ( )

FAX Number: ( )

Type of Business:

Type of License:

The Company has appointed \_\_\_\_\_

as its Equal Employment Opportunity Officer (EEOO). The EEOO has been given authority to establish, disseminate, and enforce equal employment and affirmative action policies of this company. The EEOO may be contacted at:

Address:

Telephone Number: ( )

FAX Number: ( )

For Firm's: ☐ San Diego Work Force and/or ☐ Managing Office Work Force  
I, the undersigned representative of \_\_\_\_\_  
(County) (Firm Name)  
(State)

hereby certify that information provided herein is true and correct. This document was executed on this day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Print Authorized Signature Name)

**WORK FORCE REPORT - Page 2**

NAME OF FIRM: \_\_\_\_\_ DATE: \_\_\_\_\_

INSTRUCTIONS: For each occupational category, indicate number of males and females in every ethnic group. Total columns in row provided. Sum of all totals should be equal to your total work force.

Include all those employed by your company on either a full or part-time basis. The following groups are to be included in ethnic categories listed in columns below:

- |  |  |
|--|--|
| (1) African-American, Black                          | (5) Filipino   |
| (2) Latino, Hispanic, Mexican-American, Puerto Rican | (6) Caucasian  |
| (3) Asian, Pacific Islander                          | (7) Other Ethnicities; not falling into other groups |
| (4) American Indian, Eskimo                          |  |

| OCCUPATIONAL CATEGORY  | (1)<br>African-American |     | (2)<br>Latino |     | (3)<br>Asian |     | (4)<br>American Indian |     | (5)<br>Filipino |     | (6)<br>Caucasian |     | (7)<br>Other Ethnicities |     |
|--|-------------------------|-----|---------------|-----|--------------|-----|------------------------|-----|-----------------|-----|------------------|-----|--------------------------|-----|
|  | (M)                     | (F) | (M)           | (F) | (M)          | (F) | (M)                    | (F) | (M)             | (F) | (M)              | (F) | (M)                      | (F) |
| Executive, Administrative, Managerial  |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Professional Specialty   |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Engineers/Architects   |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Technicians and Related Support  |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Sales  |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Administrative Support/Clerical  |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Services   |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Precision Production, Craft and Repair   |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Machine Operators, Assemblers, Inspectors  |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Transportation and Material Moving   |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| Handlers, Equipment Cleaners, Helpers and Nonconstruction Laborers*                |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| *Construction labors and other field employees are not to be included on this page |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| TOTALS EACH COLUMN   |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| GRAND TOTAL ALL EMPLOYEES  |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| INDICATE BY GENDER AND ETHNICITY THE NUMBER OF ABOVE EMPLOYEES WHO ARE DISABLED:   |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| DISABLED   |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| NON-PROFIT ORGANIZATIONS ONLY:   |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| BOARD OF DIRECTORS   |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| VOLUNTEERS   |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |
| ARTISTS  |                         |     |               |     |              |     |                        |     |                 |     |                  |     |                          |     |



**SUBCONSULTANTS LIST****ATTACHMENT (4)****INFORMATION REGARDING SUBCONSULTANTS PARTICIPATION:**

Proposal shall include name and complete address of all Subconsultants who will receive more than one-half of one percent (0.5%) of the contract amount or in excess of \$10,000.

Subconsultants shall be used for Scope of Services listed. No changes to this Subconsultants List will be allowed without prior written City approval.

Proposer shall also submit subconsultant commitment letters on subconsultant letterhead, no more than one page each, from subconsultants listed below to acknowledge their commitment to the team, Scope of Services, and percent of participation in the project.

| NAME AND ADDRESS<br>SUBCONSULTANTS<br>AND VENDORS | SCOPE OF<br>WORK | PERCENT<br>OF<br>CONTRACT | DOLLAR<br>AMOUNT OF<br>CONTRACT | ① MBE/<br>WBE/DBE/<br>DVBE/OBE | ② WHERE<br>CERTIFIED |
|---|------------------|---------------------------|---------------------------------|--------------------------------|----------------------|
|   |                  |                           |                                 |                                |                      |
|   |                  |                           |                                 |                                |                      |
|   |                  |                           |                                 |                                |                      |
|   |                  |                           |                                 |                                |                      |
|   |                  |                           |                                 |                                |                      |
|   |                  |                           |                                 |                                |                      |
|   |                  |                           |                                 |                                |                      |
|   |                  |                           |                                 |                                |                      |

① For information only. As appropriate, Proposer shall identify Subconsultants as:

|  |      |
|--|------|
| Certified Minority Business Enterprise         | MBE  |
| Certified Woman Business Enterprise            | WBE  |
| Certified Disadvantaged Business Enterprise    | DBE  |
| Certified Disabled Veteran Business Enterprise | DVBE |
| Other Business Enterprise                      | OBE  |

② For information only. As appropriate, Proposer shall indicate if Subconsultant is certified by:

|   |          |
|---|----------|
| City of San Diego   | CITY     |
| State of California Department of Transportation            | CALTRANS |
| San Diego Joint Agencies Contracting Opportunity Task Force | JACO     |